

L.D. 1467
(Filing No. S-239)
STATE OF MAINE SENATE 114TH LEGISLATURE FIRST REGULAR SESSION
COMMITTEE AMENDMENT "A" to S.P. 532, L.D. 1467, Bill, "An Act to Facilitate the Expeditious Resolution of Certain Superior Court Cases"
Amend the bill by inserting after the title and before the enacting clause the following:
' <b>Emergency preamble. Whereas,</b> Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and
Whereas, the Law Court has recently decided that a party to a forcible entry and detainer action, an eviction action, has a constitutional right to a de novo trial by jury on appeal to the Superior Court after an initial judgment has been rendered by the District Court; and
Whereas, this newly recognized constitutional right to a jury trial could add substantially to the time and complexity inherent in resolving disputes between landlords and tenants and could add considerably to the costs of the parties and the court system involved with forcible entry and detainer actions; and
Whereas, there were over 3,000 forcible entry and detainer actions handled last year by the District Courts; and
Whereas, there are at present no statutes and no rules of court prescribing how the Superior Court should entertain these appeals and protect the rights of the parties during the pendency of an appeal; and
Whereas, principles of justice require that the constitutional right to a jury trial be provided without undue harm to the rights of the appellee and without undue disturbance of the balance of rights current law has struck between landlords and tenants; and

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1 Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of 3 Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and 5 safety; now, therefore,'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in
its place the following:

'14 MRSA §6008, as amended by PL 1979, c. 172,  $\S1$ , is further amended to read:

§6008. Appeals

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Either party may appeal on guestions of law from a judgment 17 to the Superior Court as in other civil actions. Either party may appeal on any issue triable by right by a jury to a trial de 19 novo in the Superior Court as provided in this section. When-the plaintiff-appeals,-ho-shall-recognize-in-manner-aforesaid-to-the 21 defendant,-except-as-otherwise-provided,-conditioned-to-exter-the astion--and--to--pay--all--costs--adjudged--against-him. When the defendant appeals, the Superior Court Judge may stay the issuance 23 of a writ of possession pending disposition of the appeal. The 25 judge Superior Court shall, - in -all-appropriate - cases, condition the granting and continuation of the stay on the defendant's 27 payment of the current rent for the premises into an escrow account to be administered by the clerk of the Superior Court 29 and, in all appropriate cases, on the defendant's agreement to refrain from any nuisance or damage. Upon finding a violation of 31 the conditions for granting the stay, the Superior Court shall vacate the stay, Upon application of either party, the Superior Court may authorize payments from the escrow account for 33 appropriate expenses related to the premises. The appeal 35 decision or an agreement of the parties shall provide for the disposition of the escrowed rent.

The procedures with respect to the appeal of an issue 39 triable by right by a jury to a trial de novo in Superior Court shall be set forth in rules to be promulgated by the Supreme 41 Judicial Court.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.'

STATEMENT OF FACT

This amendment changes the bill in several ways to preserve 51 the balance of rights between landlords and tenants fashioned by current law and to respond in a timely and accurate manner to the

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 Law Court's recent decision in North School Congregate Housing v. <u>Merrithew</u>, Law Docket No. Cum-88-332, decided May 19, 1989. In
 that case the Law Court ruled that parties to an eviction action have a constitutional right to a jury trial de novo on appeal to
 the Superior Court after an initial judgment has been entered by the District Court.

The amendment makes the bill an emergency measure effective 9 upon approval to avoid a period of uncertainty as to the rights of parties to an eviction action and the costs that uncertainty 11 would engender for all concerned.

13 The amendment requires the Superior Court to condition its stay of a writ of possession during the pendency of the appeal on 15 the tenant's payment into escrow of current rent. In other words, a tenant who appeals must pay the rent as it comes due 17 into escrow until the dispute is resolved.

19 The amendment removes provisions in the bill which conditioned a tenant's right to a jury trial on appeal to payment 21 into escrow of back rent and other damages in controversy.

23 The amendment also allows the Superior Court, in appropriate cases, to condition stay of the writ of possession on the 25 defendant's agreement not to damage the premises or create a nuisance. The amendment requires the court to vacate the stay, 27 in which case the defendant must leave the premises, if the conditions of the stay are violated.

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The amendment empowers the Superior Court to authorize 31 payments from the escrow account to meet appropriate expenses, such as mortgage payments and heat and utility charges, related 33 to the premises.

35 The amendment removes a provision in the bill which would allow the prevailing party to ask the court for a ruling that the 37 appeal was frivolous and an order that the appellant pay the prevailing party's court costs and attorney's fees. Rule 11 of 39 the Maine Rules of Civil Procedure provides suitable safeguards, in the form of sanctions against attorneys, against frivolous 41 appeals.

43 The amendment also removes provisions conditioning the right to a jury trial on the filing of affidavits and a statement of 45 the basis for the appeal with the notice of appeal. It is anticipated that the Supreme Judicial Court will promptly 47 promulgate procedural rules governing, among other things, the types of pleadings to be filed in these appeals.

The amendment removes the ambiguous requirement in current 51 law that requires a plaintiff who appeals "recognize" to the defendant as provided by the Maine Revised Statutes, Title 14, 53 section 6006.

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Finally, the amendment provides that the Supreme Judicial Court shall promulgate rules necessary for the prosecution of these appeals.

Reported by Senator Matthews for the Committee on Legal Affairs. Reproduced and Distributed Pursuant to Senate Rule 12. (6/8/89) (Filing No. S-239)